period covered by the lease. *Galvin v. Beals,* 187 Mass., 250; *Akerly v. White,* 58 Hun. (N. Y.), 362; *Viterbo v. Friedlander,* 120 U. S., 707. There is a distinction drawn between covenants to keep the premises in repair, and those in which the lessor agrees to keep them in a safe condition. See *Miles v. Janvrin,* 196 Mass., 431, 438. In covenants of the latter sort, no notice to the lessor is necessary. In the former, notice is necessary before the lessor is in default. *Rumberg v. Cutler,* 86 Conn., 8, 10; *Miles v. Janvrin, supra.* After notice, the lessor's liability rests on his negligent failure to perform his contractual duty, or the performing of it in a negligent manner. *Dustin v. Curtiss,* 74 N. H., 266, 269. And breach of duty by the lessor cannot be predicated on the mere failure to perform. *Marley v. Wheelright,* 172 Mass., 532, 533; *Towne v. Thompson,* 68 N. H., 317. In cases like the present there is no such bailment of the person into the hands of the lesse, which will make him liable as a common carrier. *Williams v. Park Ass'n,* 128 Iowa, 32, 38; *Hart v. Wash. Park,* 157 Ill., 9. Hence the lessee was not an insurer of the safety of the theatre seats, but only assumed the duty of exercising reasonable care to have the seats in a reasonable safe condition for its guests. *Turgeon v. Conn. Co.,* 84 Conn., 538; *Scofield v. Wood,* 170 Mass., 415; *Nephler v. Woodward,* 200 Mo., 179. In some jurisdictions it is held that the covenant of the landlord does not inure to the benefit of a stranger to the contract, and that no action will lie in tort for a breach of it. *Frank v. Mandel,* 76 N. Y. App. Div., 413; *Davis v. Smith,* 26 R. I., 129. But if the third party is in the premises at the invitation of the lessor, he can take advantage of such a contract to repair by the lessor. *Clyne v. Helmer,* 61 N. J. L., 358, 368. But other courts hold the lessor on his covenant, if he negligently makes or fails to make repairs, to avoid circuity of action. *Boyce v. Tallerman,* 183 Ill., 115; *City of Lowell v. Spaulding,* 4 Cush. (Mass.), 277; *Cheetham v. Hampson,* 4 Durn. & East., 318. The principal case, holding that the lessor is not liable on his covenant unless he has knowledge of the necessity of repairs, or has received notice from the tenant, is clearly in harmony with the weight of authority.

MORTGAGES—ABSOLUTE DEED AS MORTGAGE—EVIDENCE.—MITTLESTEADT V. JOHNSON, 135 PAC., 214.—*Held,* the presumption is that an absolute deed, with or without a contemporaneous agreement for a resale, there being nothing on the face of the papers to show a contrary intent, is what it appears to be, and he who asserts that it should be given a contrary construction must show by clear and convincing evidence that a mortgage and not a sale with a right to repurchase was intended.

The weight of authority is in accord with the case under discussion and holds that he who seeks to prove a deed absolute on its face to be a mortgage must prove the same by clear and convincing evidence. *Cadman v. Peter,* 118 U. S., 73; *Coyle v. Davis,* 116 U. S., 73; *Horbach v. Hill,* 112 U. S., 144; *Reeves v. Abercrombie,* 108 Ala., 535; *Williams v. Williams* 180 Ill., 361; *Bowery Savings Bank v. Belt,* 60 Hun. (N. Y.), 57; *Snavely v. Pickle,* 29 Gratt. (Va.), 27. The rule in England is the same. *Townshend v. Stangroom,* 6 Ves. Jr., 328. When evidence is introduced it is

a matter for the jury to determine the intent of the parties, *Bogk v. Gessert,* 149 U. S., 17; *Clup v. Wooten,* 29 Miss., 503; *Morris v. Budlong,* 78 N. Y., 543, but in the absence of evidence it is a question of law for the court to determine from the writing alone, *Kieth v. Catchings,* 64 Ga., 773; *Munro v. Watson,* 6 Grant Ch. U. C., 60; *Beale v. Ryan,* 40 Tex., 399, and if nothing so tending appears on the face it will not be construed a mortgage, *Reynolds v. Reynolds,* 42 Wash., 107; *Runyon's Adm'r v. Pogue,* 19 Ky. Law, 940. Some cases even hold that conclusive evidence is necessary to establish a mortgage, *Lincoln v. Wright,* 5 Tenn., 1142; *Woods v. Jensen,* 130 Cal., 205; *Kibby v. Harsh,* 61 Iowa, 196, others incline to the view that a mere preponderance of evidence is enough, *Wallace v. Berry,* 83 Tex., 328; *Miller v. Yturria,* 69 Tex., 549; *Kellogg v. Northrup,* 115 Mich., 327, but some jurisdictions do not accept this rule if there is a substantial conflict in the testimony, *Perot v. Cooper,* 17 Colo., 80; *Howe v. Fisher,* 2 Barb. Ch., 559. There are also states which hold, contrary to the principal case, that when a deed absolute on its face is shown to be either a sale with a right to redeem or a mortgage, a less degree of proof is required for the latter than the former. *Cosby v. Buchanan,* 81 Ala., 574; *Michell v. Wellman,* 80 Ala., 16; *Howland v. Blake,* 97 U. S., 624. In Georgia it was held that on a bill in equity seeking to foreclose on a deed absolute on its face as a mortgage, that an instruction that it must be shown by clear and convincing to be a mortgage is erroneous, *DeLaigle v. Denham,* 65 Ga., 482, and in West Virginia that where the parol evidence leaves it in doubt as to whether the paper is a mortgage or an absolute deed, the court will incline to construe it a mortgage. *Gilchrist v. Beswick,* 33 W. Va., 168.

MORTGAGES—ANTECEDENT DEBT—BONA FIDE PURCHASER FOR VALUE.—HUNT V. HUNT, 134 PAC. (ORE.), 1180.—*Held,* that an employer who accepted a mortgage from an employee for the amount embezzled by the latter and extended the time of payment of such amount six years, was a *bona fide* purchaser for value as against the employee's wife who was induced to join in the mortgage by her husband's false representations, since extending the time for the payment of an antecedent debt is sufficient to constitute a mortgagee a purchaser for a valuable consideration.

The general rule is that an antecedent debt is good consideration to sustain a mortgage given therefor as security, *Usina v. Usina,* 58 Ga., 178; *Hewitt v. Powers,* 84 Ind., 295; *Laylin v. Knox,* 41 Mich., 40; *Rea v. Wilson,* 112 Iowa, 517, and the weight of authority accords with the principal case in that one who joins a new consideration to the old debt is regarded as a *bona fide* purchaser for value, *Whitfield v. Riddle,* 78 Ala., 99; *Cook v. Parham,* 63 Ala., 456; *Douglas v. Miller,* 102 N. Y. App. Div., 94; *Branch v. Griffin,* 99 N. C., 173, but the mortgagee must be divested of some right or surrender some security to free himself from equities. *Salisbury Savings Society v. Cutting,* 50 Conn., 113; *Wells v. Morrow,* 38 Ala., 125; *Smith v. Moore,* 112 Iowa, 60; *Breed v. Auburn National Bank,* 171 N. Y., 648; *Small v. Small,* 34 N. C., 16; *People's Savings Bank v. Bates,* 120 U. S., 556. As in the case under discussion, the extension of time is, in